THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.14897 OF 2005

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ORDER

This Writ Petition is filed seeking a Mandamus declaring the action of the respondents in refusing to deliver disposed goods (used oils) covered by lot Nos.70 and 72 after accepting the highest bid of the petitioner in the auction held on 26.10.2004 as arbitrary and illegal.

The case, in brief, may be stated as under:

The Andhra Pradesh State Road Transport Corporation (APSRTC) published a tender-cum-auction notification in September, 2004 inviting scrap dealers to participate in tender-cum-auction of unserviceable vehicles, materials, tyres etc. scheduled on 26.10.2004. In pursuance thereof, the petitioner submitted tenders for lot No.70 (used gear oil) and lot No.72 (used engine oil). One of the conditions imposed in the tender notification was that 10% of the value quoted should be paid along with the tender towards earnest money deposit (EMD) as well as incidental and ancillary charges as mentioned therein. The said EMD will not carry any interest. After acceptance of tender, the tenderer is required to deposit the balance of 5% EMD. In pursuance of the said tender notice, auction was held on 26.10.2004 and the petitioner was the successful bidder for the commodities, viz., used gear oil and used engine oil, which were quoted as lot Nos.70 and 72 in the tender-cum-auction notice. Along with his tender, the petitioner paid 5% of the EMD and after declaration as successful bidder, the balance of 5% EMD was also deposited. However, the sale was not confirmed immediately. After several requests made by the petitioner, it was informed by the 2nd respondent-Controller of Stores, APSRTC that the petitioner was required to obtain a Certificate from the A.P. Pollution Control Board. Since such certificate from A.P. Pollution Control Board was never insisted upon in the earlier auctions held by the Corporation at Karimnagar and Nellore and since the petitioner had already enclosed the certificate issued by the Industries Department, Government of Andhra Pradesh, which was equivalent to the certificate of the A.P. Pollution Control Board, the petitioner by letter dated 1.11.2004

requested the 2nd respondent not to insist upon the certificate of the A.P. Pollution Control Board. Since there was no response, the petitioner approached the 1st respondent – Vice Chairman and Managing Director, APSRTC, bringing all the aforesaid facts to his notice. Thereafter, the petitioner was served with a copy of the letter dated 4.04.2005 addressed by the 2nd respondent to the 3rd respondent-Deputy Chief Accounts Officer, informing that the 1st respondent had directed forfeiture of 5% of the value of the EMD paid by the petitioner against lot Nos.70 and 72 and the balance of 5% EMD would be refunded. Aggrieved by the said action, this Writ Petition is filed.

The petitioner claims that under the tender notice, it was not mandatory to produce a certificate from the A.P. Pollution Control Board to deal with disposed items for further reprocessing. Thus, it is contended that the action of the Corporation in forfeiting 5% EMD on the ground of failure of the petitioner to produce such a certificate was arbitrary and illegal. It is also contended that the petitioner purchased used oil from the Corporation for its own use, as fuel, for running the machinery used in the manufacturing of Aluminium utensils but not for reprocessing, and therefore, the Certificate from the A.P. Pollution Control Board was not necessary. At any rate, according to the petitioner, the certificate issued by the Industries Department, which was enclosed along with the tender of the petitioner, is equivalent to the certificate by the A.P. Pollution Control Board, and as such, it cannot be said that the petitioner failed to comply with the tender conditions.

On behalf of the Corporation a counter-affidavit has been filed, in which, the fact that the petitioner was the highest bidder in the auction held on 26.10.2004 and that the requisite 10% EMD was paid by the petitioner has not been disputed. However, it is contended that as per item No.9 of Annexure-A to the tender conditions, it was clearly stipulated that the offer for used engine oil and used gear oil will be accepted only on production of valid licence issued by the A.P. Pollution Control Board to deal with the disposed items for further processing; otherwise, the offer will be rejected and EMD paid will be forfeited. At the time of auction on 26.10.2004 the letter of the General Manager, District Industries Centre, Hyderabad enclosed by the petitioner along with its tender, was mistakenly taken as a valid certificate from the A.P. Pollution Control Board. However, on a detailed verification of the documents, it was found that such letter enclosed by the petitioner was only an acknowledgment from

the General Manager, District Industries Centre, Hyderabad, to operate their unit at House No.19/2, Industrial Area, Azamabad, Hyderabad, for manufacturing Aluminium circles and utensils. The said letter did not give any authorization to the petitioner to buy, deal in or use for their consumption any of the used oils; as such, the petitioner was informed to get a proper certificate from the A.P. Pollution Control Board. Though the petitioner promised to produce the required certificate, it failed to do so; but on the other hand, contended that the certificate enclosed by it was equivalent to the certificate issued by the A.P. Pollution Control Board. In the circumstances, the Corporation approached the Secretary, A.P. Pollution Control Board, Hyderabad as well as the General Manager, District Industries Centre, Musheerabad for necessary certification. The General Manager, District Industries Centre, Hyderabad, vide letter dated 25.11.2004 informed that their letter was only with reference to the manufacture of Aluminium utensils, however, they did not clarify the issue whether the petitioner was authorized to purchase used engine oil and used gear oil. The Member Secretary, A.P. Pollution Control Board by letter dated 14.12.2004 clarified that the petitioner was not having authorization or registration of the Board. A list of authorized used oil refining units, which were registered as reprocessing units, was also communicated. On the basis of the same, the Corporation concluded that the petitioner was not authorized to buy used oil and accordingly, the 1st respondent ordered forfeiture of 5% of EMD and directed refund of the balance. In pursuance thereof a sum of Rs.89,117,94 ps was withheld from out of 10% EMD paid and the balance of Rs.80,117.94 ps was refunded to the petitioner. The said action is in accordance with law, and therefore, interference by this Court is not warranted.

I have heard the learned counsel for the petitioner and learned Standing Counsel appearing for the respondents and also perused the material on record.

Terms and Conditions for sale of unserviceable material etc., as specified in the tender-cum-auction notice issued by the APSRTC include a specific condition under Annexure A, which is as under:

> "Offers for scrap used engine oil, used gear oil and grease will be accepted only on production of valid licence copy issued by the A.P. Pollution Control Board to deal with the disposed items for further reprocessing; otherwise, the offers will be rejected and the EMD paid will be forfeited (Xerox copy of the licence to be enclosed to Tender form filled)".

Admittedly, though the petitioner made an offer to purchase used engine oil and gear oil, it did not enclose such a copy of licence from the A.P. Pollution Control Board. On the other hand, along with its tender the petitioner produced a letter given by the General Manager, District Industries Centre, Hyderabad dated 14.06.2002. A perusal of the said letter shows that it was issued with reference to Rule 32-A of the Water (Prevention and control of Pollution Rules, 1994 and Rule No.29-A of the Air (Prevention and control of Pollution Rules, 1994, acknowledging the application of the petitioner to establish and to operate their unit “Aluminium Circles & Utensils”, at House No.19/2, Industrial Area, Azamabad, Hyderabad, as the unit was not covered under Schedule No.IV & II of the above Rules. It was also made clear in the said letter that the said acknowledgment may be treated as consent of A.P. Pollution Control Board, subject to certain guidelines/conditions.”

Though, it is true that in the said letter it was mentioned that the said acknowledgment issued by the District Industries Centre, can be treated as the consent of the A.P. Pollution Control Board under the provisions of the Water (Prevention and control of Pollution) Rules, 1994 and Rule 29-A of the Air (Prevention and control of Pollution) Rules, 1994, obviously, consent of the Industries Department as well as the A.P. Pollution Control Board granted to the petitioner was only to establish and operate the unit - Aluminium Circles & Utensils at House No.19/2, Industrial Area, Azamabad, Hyderabad. As rightly contended by the learned counsel for the respondent-Corporation, the said consent has nothing to do with the used engine oil and used gear oil. What is required under condition No.9 of Annexure A to Terms and Conditions prescribed under the tender-cum-auction notification, is a licence issued by the A.P. Pollution Control Board to deal with the used engine oil and used gear oil for reprocessing. By no stretch of imagination, the consent of the Industries Department as well as the A.P. Pollution Control Board under the letter dated 14.06.2002 can be taken as the licence issued by the A.P. Pollution Control Board for reprocessing the used engine oil and used gear oil as required under the Terms and conditions of the tender-cum-auction notice. Since under condition No.9, it was made clear that in the absence of such licence, all the offers will be rejected and EMD paid will be forfeited, the Corporation cannot be found fault with in forfeiting 5% of the EMD paid by the petitioner.

However, the learned counsel for the petitioner vehemently contended that the petitioner-unit had tendered to purchase the used oil only for its own use in its unit, which does not involve any further reprocessing. The said question being a pure question of fact, cannot be enquired into and decided by this Court. At any rate, in the counter-affidavit filed by the Corporation, the said plea of the petitioner has been disputed and it is stated that the used engine oil and used gear oil are basically lubricating oils and they cannot be used as fuel. Hence, I am unable to accept the said plea of the petitioner.

Yet another contention raised by the petitioner that Karimnagar and Nellore Zonal stores of the Corporation did not insist upon such certificate and allowed the petitioner to participate in the auction and to lift used oils even in the absence of any licence from the A.P. Pollution Control Board, is also without any substance. Even assuming that such a certificate was not insisted upon by some other Zonal Offices of the Corporation, keeping in view the specific condition under tender-cum-auction notification, no Mandamus can be issued to the respondent-Corporation compelling to accept the bid of an unqualified tenderer, who failed to satisfy the terms and Conditions of the tender-cum-auction notice.

For the aforesaid reasons, the Writ Petition is devoid of any merit and the same is accordingly dismissed. No costs.

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(G. ROHINI, J.)

March 29, 2006.

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THE HON'BLE Ms. JUSTICE G. ROHINI

WRIT PETITION No.14897 OF 2005

29th March, 2006.

Between:

M/s Hind Metal Industries,

19/2, Industrial Area, Azamabad,

Hyderabad, represented by its

Proprietor – Abdul Azeea. .. Petitioner.

And

The Vice Chairman and Managing Director,

Andhra Pradesh State Road Transport

Corporation, Musheerabad, Hyderabad

and two others. .. Respondents.